IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3128 OF 1996

ASHOK NARAYAN KAMANE
ADULT, R/O.LAXMI KHAR,
JANJIRA MURUD,
DISTRICT RAIGAD. ... PETITIONER.

VS.

1. ANJUMAN-E-ISLAM JANJIRA
HAVING OFFICE AT JANJIRA
-MURUD, DIST.RAIGAD,
2. ANJUMAN-E-ISLAM AGRICULTURE
HIGH SCHOOL & JUNIOR COLLEGE
OF SCIENCE,JANJIRA-MURUD,
DIST. RAIGAD.
3. MRS. MUSSARAT HARNEKAR,
ADULT, OCCU.SERVICE C/O.
ANJUMAN ISLAM AGRICULTURAL
HIGH SCHOOL, JANJIRA-MURUD,
RAIGAD.
4. STATE OF MAHARASHTRA. ... RESPONDENTS.

MR. M.P.VASHI FOR THE PETITIONER.
MR. A.P.VANARSE AGP FOR RESPONDENT NO.4.
MR. D.G.SURANA ADV. FOR RESPONDENT NO.1 & 2.

CORAM : A.P. DESHPANDE, J.
DATE : January 12, 2007.

JUDGMENT

1. The Petitioner possesses qualification of H.S.C. D.Ed. The Petitioner is appointed as Laboratory Assistant in a school administered by the Respondent and is working as such. The Post of assistant teacher fell vacant and, hence, the petitioner set his claim for appointment as an assistant teacher. The Respondent instead of appointing the petitioner, appointed respondent No.3. Being aggrieved thereby, the Petitioner filed an Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, before the School Tribunal. The School Tribunal rejected the Appeal by observing that there is no element of supersession of a claim and thus, the Tribunal has no jurisdiction. It is observed by the Tribunal that the post of Laboratory Assistant is non teaching post and there is no promotional channel prescribed for promotion of a person from non teaching post to a teaching post. Schedule -F of the M.E.P.S. Rules, deal with the guide-lines for fixing of seniority of a non teaching staff, makes the following provisions with regard to the Lower Grade Staff.

" SCHEDULE - F :

LOWER GRADE STAFF- A common seniority list of Laboratory Attendant, Naik, Oilman, Machine Attendant, Peon, Watchman, Chowkidar, Sweeper, other

lower grade staff, if any, shall be maintained on the basis of the dates of their appointment. If any of the lower grade staff improves his qualification as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post according to his place in seniority".

2. A perusal of the said provisions reveals that if any of the Lower Grade staff improves his qualification as prescribed either for the post of Laboratory Assistant or Clerk, such employee should be given preference while filling in the said post. Thus a Laboratory Attendant can claim preference while filling in the promotional post of Laboratory Assistant or Clerk. The Tribunal is right in holding that the post of the Assistant Teacher not being a promotional post from Laboratory Assistant, there is no question of supersession of the claim. Section 9 vests the Tribunal with jurisdiction to deal with an Appeal only when an employee is superseded by the Management while making an appointment to any post by promotion. As the post of Assistant Teacher is not a promotional post from the post of Laboratory Assistant, Section 9(1)(b) of the Maharashtra Employees of Private Schools Regulation Act,1977 is not attracted and the Tribunal does not have jurisdiction to adjudicate the appeal.

3. Even on merits, the view taken by the Tribunal cannot be faulted. There is no merit in the petition.

Hence, the same is dismissed. Rule discharged.

.....

[A.P.DESHPANDE, J.]

GR JD.No.4/98 dtd.3.7.76 Spl.HCASDD 28

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3128 OF 1996

DATE OF DECISION : January 12, 2007

For approval and signature :

The Hon'ble Mr. Justice A.P.Deshpande:

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the

interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?

*****